

1 advisory and removed the *Blakely* bar to judicial fact-finding in calculating the now-advisory
2 guidelines. Defendant argues that *ex post facto* principles require a sentence no higher than that
3 permitted at the time of Defendant's plea. The Ninth Circuit has previously rejected this *ex post*
4 *facto* argument. In *United States v. Newman*, 203 F.3d 700, 702-03 (9th Cir. 2000), the Ninth
5 Circuit held that the *ex post facto* principles advanced by Defendant "are inapplicable where the
6 decision to be retroactively applied does not expand the scope of criminal liability but, by
7 interpreting a federal statute 'merely restricts the avenues a defendant may pursue to prevent
8 enhancement of a sentence. . . ." *Id.* at 702 quoting *United States v. Ricardo*, 78 F.3d 1411,
9 1416 (9th Cir. 1996). See also *Holgersen v. Knowles*, 309 F.3d 1200, 1202-03 (9th Cir. 2002),
10 *United States v. Dupas*, 419 F.3d 917, 919-21 (9th Cir. 2005).

11 Accordingly, upon resentencing the Court must apply the advisory guidelines as well as
12 the sentencing factors enumerated in 18 U.S.C. § 3553, as limited by the statutory maximum
13 sentences prescribed for the offenses set forth in Count I and Count II of the Information.

14 **IT IS THEREFORE ORDERED** setting this matter for a resentencing hearing on
15 Friday, January 6, 2006, at 3:00 p.m. The parties shall file any sentencing memoranda ten (10)
16 business days in advance of that date and shall file their responses, if any, three (3) business
17 days prior to the hearing.

18 DATED this 18th day of November, 2005.

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David K. Duncan
United States Magistrate Judge